

DISCUSSION

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(2), (3).

Here, Petitioner raises claims of ineffective assistance of counsel and newly discovered forensic evidence. See Petition at 6. Petitioner alleges that these claims rely upon newly discovered evidence that was previously unknown to him. Id. The instant petition challenges the same conviction and sentence as the earlier petition in case no. C 99-21216 JF (PR), this earlier habeas petition was denied on the merits, and Petitioner has not presented an order from the Court of Appeals authorizing this Court to consider any new claims. Accordingly, this Court must dismiss the instant petition in its entirety. See 28 U.S.C. § 2244(b)(3)(A).

CONCLUSION

The instant petition is DISMISSED without prejudice as a second and successive petition pursuant to 28 U.S.C. § 2244(b)(2). The Clerk shall terminate any pending motions and close the file.

IT IS SO ORDERED.

DATED: 1/15/08



JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

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